

Client Alert

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Advertisements Invite Calls: FCC Seeks Comments on Request to Find Automated Calls Consensual When Recipient Advertised Number

By Joseph Palmore, Tiffany Cheung, and Daniel Wilson

The Federal Communications Commission (FCC) seeks comment on a petition asking that the FCC clarify the scope of “prior express consent” under the Telephone Consumer Protection Act (TCPA). Specifically, Citizens Bank asks the FCC to confirm that if someone chooses to purposefully advertise his or her cell phone number, that party will be considered to have provided prior express consent to receive autodialed or prerecorded non-telemarketing calls on that number.

The TCPA generally prohibits certain calls to cell phones that are made with an autodialer or an artificial or prerecorded voice. The statute permits such non-marketing calls, however, when the called party has given prior express consent.¹ In the context of faxes (also subject to regulation under the statute), the FCC has noted that, in the context of an established business relationship, “if the sender obtains the number from the recipient’s own advertisement, the advertisement would serve as evidence of the recipient’s agreement to make the number available for public distribution.”² Citizens Bank asks the FCC to clarify that the same rule applies to cell phone calls.

Citizens Bank filed the petition after being sued by a debtor who defaulted on two loans from Citizens Bank. Seeking to recoup Citizens Bank’s money, third-party vendors hired by the bank called the debtor on a cell phone number listed in public advertisements for her business, including on the business’s website. Based on these calls, the debtor sued, claiming violations of the TCPA.

Citizens Bank argues in its petition that the requested clarification would avoid such “litigation traps,” in which an individual solicits calls by advertising his or her number, then seeks damages from those who call the number. Citizens Bank also argues that the public interest would be served by permitting automatic debt-collection calls in such situations because they make it easier to verify that the right number has been dialed, to track the frequency and timing of the calls made, and to ensure that the information being relayed is permissible and consistent with the law.

The deadline to submit comments on Citizens Bank’s petition is March 16, 2015.

¹ 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii).

² Federal Communications Commission, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax Prevention Act of 2005, CG Docket Nos. 02-278, 05-338, Report and Order and Third Order on Reconsideration, 21 FCC Rcd, 3787, 3795, para. 15 (2006).

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